Supreme Court, U.S.
FILED
SEP 22 1997
CLERK

No. 97-519

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1996

UEON C. BAK,

Petitioner,

vs.

MARVIN T. RUNYON,
Postmaster General,

Respondent.

On Petition For Writ of Certiorari
To The United States Court of Appeals
For The Ninth Circuit

SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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FILED

MAR -8 1996

Clerk, U.S. District Court
Central District of
California
Southern Division at
Santa Ana

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

UEON BAK,

Plaintiff,

v.

MARVIN RUNYON,
POSTMASTER GENERAL,

Defendant.

SA CV 93-181 AHS
(EEx)

JUDGMENT

This action came on for trial before the Court, the Honorable Alicemarie H. Stotler, District Judge, presiding, and the issues having been duly tried and decision having been duly rendered,

ENTERED
MAR 12 1996

It is so Ordered and Adjudged:

that plaintiff takes nothing against defendant, that judgment be entered in favor of defendant, and that defendant recover its cost of action.

Dated: March 8, 1996

/S/ Alicemarie H. Stotler

ALICEMARIE H. STOTLER
UNITED STATES DISTRICT
COURT

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MAR 12 1996

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

UEON BAK,

Plaintiff,

v.

MARVIN RUNYON,
POSTMASTER GENERAL,

Defendant.

SA-CV-93-181-AHS
(EEx)

FINDINGS OF FACT AND
CONCLUSIONS OF LAW
AFTER COURT TRIAL

Introduction

Trial was conducted February 22, 1996, during which the Court heard testimony and received exhibits in evidence. Having duly considered the record, the Court finds that plaintiff has not proven his case and that judgment should be entered for defendant.

Pursuant to the Pretrial Conference Order, it was stipulated that plaintiff resigned on three separate occasions, each time rescinding his resignation before it was processed.

This time, plaintiff resigned shortly after the United States Postal Service (USPS or Service) presented him with a removal notice (alleging his absence without leave.)

Findings of Fact

1. This is an action under Section 15 of the Age Discrimination in Employment Act (ADEA), 29 U.S.C. Sec. 633a, in which plaintiff alleges he submitted a rescission to his earlier resignation, and his rescission was not accepted because of his age.

2. Plaintiff was employed by the Postal Service as a distribution clerk at the Santa Ana, California Post Office. Plaintiff tendered his resignation in September 1989, when he was forty-six years old.

3. On July 19, 1988, plaintiff submitted a written resignation and subsequently withdrew it. See Exhibit 101. Likewise, he resigned in writing on December 17, 1988, and orally cancelled the resignation after the Christmas holidays. See Exhibit 104. Also, on July 17, 1989, plaintiff resigned in writing citing "personal" reasons, and also subsequently orally cancelled the resignation. See Exhibit 109.

4. On August 10, 1989, plaintiff submitted a written resignation, the stated reason was "doing my own business." The resignation was to be effective on September 1, 1989. See Exhibit 111.

5. On September 19, 1989, plaintiff contacted an EEO counsellor and filed an informal complaint of discrimination alleging he was not permitted to withdraw his resignation because of discrimination. See Exhibit 113.

6. Plaintiff filed a formal administrative complaint of discrimination on September 22, 1989. See Exhibit 114. As a

result of this complaint, an investigation of plaintiff's allegations was conducted. Documents and affidavits were collected.[1]

7. At the conclusion of the investigation, on March 15, 1990, the Postal Service issued a Proposed Disposition proposing a finding of no discrimination. See Exhibit 115. Plaintiff rejected this proposal and requested a hearing.

8. On may 25, 1990, a hearing was conducted by an Equal Employment Opportunity Commission (EEOC) Administrative Judge. Plaintiff testified, as did several agency employees. See Exhibit 116.

9. After the conclusion of the hearing, on June 7, 1990, the Administrative Judge issued a recommended decision of no discrimination. See Exhibit 117. In so doing, the Administrative Judge determined that the plaintiff failed to establish a prima facie case.

10. On July 30, 1990, the Postal Service issued a Final Agency Decision, adopting the EEOC Recommended Decision. See Exhibit 118.

11. On August 13, 1990, plaintiff appealed the Final Agency Decision to the Office of Review and Appeals (ORA),[2]

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[1] In his formal complaint, plaintiff alleged that he suffered discrimination on the bases of race, color, religion, national origin, sex, age, reprisal, and handicap. See Exhibit 114. At the hearing stage he was deemed to have dismissed all of these bases except race. See Exhibit 116. His complaint only includes the basis of age. The Ninth Circuit has ruled that one need not exhaust one's administrative remedies in age discrimination cases.

[2] Pursuant to a reorganization, this office is now called the Office of Federal Operations.

an appellate body within EEOC. See Exhibit 119. On November 14, 1990, the ORA sustained the decision of the Postal Service concluding that plaintiff had failed to establish a prima facie case of discrimination. See Exhibit 120.

12. By letter dated November 20, 1990, plaintiff petitioned the ORA to reopen his case. See Exhibit 121. On March 7, 1991, ORA declined to do so. See Exhibit 122. This suit followed.

13. The essential issue is whether the defendant refused to allow plaintiff Bak to rescind his resignation from the United States Postal Service (USPS or Service) because the Service, through its personnel, harbored an age-based bias against plaintiff who was age 46 years at the time of his resignation and alleged rescission thereof. The Court finds no such bias.

14. As noted, plaintiff resigned on prior occasions from the Service but he was allowed to withdraw the resignations. These events occurred when plaintiff was over age 40, the protected age cut-off. Two of the persons with whom plaintiff dealt, Mr. Butts and Ms. Oliver, were older than Mr. Bak. Mr. Burks is presumably younger. Each rescission was effected by Mr. Bak before the effective date. Mrs. Bak was allowed to rescind her resignation and she also is over 40 years of age.

15. The policy of the USPS is to accept resignations. Ex. 106. The "policy" of allowing employees to withdraw resignations is also acknowledged by the Service's Employees' Labor Manual, an excerpt of which constitutes Ex. 106. As plaintiff correctly points out, there is no prescribed method by which an employee must convey his wish to rescind his resignation. However, a withdrawal must occur before the "effective date" of the resignation.

16. Plaintiff was presented with a proposed Notice of Removal on August 10, 1989. He then resigned. He chose an effective date of September 1, 1989. Plaintiff asserts that he later submitted a note dated August 10, 1989, to the Personnel department's secretary, Diana Suttick; however, such note was never received by those who would act on it. In previous administrative proceedings, Mr. Bak made no reference to his withdrawal note. Plaintiff also asserts that he told his supervisors, his union steward, and Ms. Oliver herself during their 3 to 4 hour meeting on the same date – i.e., that he had revoked his resignation.

17. Ms. Oliver, on the other hand, understood Mr. Bak to be intent on resigning. He explained his unhappiness with the Service and set forth to her his numerous other career opportunities. Clearly, if Mr. Bak had submitted a notice of rescission of the resignation submitted on August 10, he would not have spent hours discussing his dissatisfaction and airing other career prospects, a discussion which both witnesses describe as taking place.

18. When September 1 came and went, Mr. Bak continued reporting to work. When inquiry was made to Ms. Oliver on September 11, 1989, why a resigned employee was still submitting time records, she learned that Mr. Bak was in fact still working. She called him at his home (his graveyard shift for the day had ended) and he explained that his need to have health insurance coverage kept him reporting to work. Ms. Oliver thereafter arranged for Mrs. Bak to regain her position at the Huntington Beach branch plus a two-week leave in order to arrange for baby-sitting.

19. After these arrangements were made, Mr. Bak agreed that Ms. Oliver could change the effective date from September 1 to September 11, 1989, in order for Mr. Bak to be paid for the last eleven days of work. Mr. Bak tried to rescind his resignation on September 12, 1989, or on a date thereafter,

date" had passed. Pursuant to Ex. 106, withdrawal of a resignation is not permitted if the effective date has passed. Such was the case for Mr. Bak, in that his resignation was already accepted by the Service.

CONCLUSIONS OF LAW

The Court finds that (1) plaintiff did not timely rescind his final resignation and (2) defendant did not fail or refuse to process a rescission of his resignation because of age-based animus. The Court concludes that plaintiff has not established a prima facie case of age discrimination. Defendant's reason for not allowing Mr. Bak to return to work is because he resigned and not because of bias against him due to his age over 40 years.

DATED; March 8, 1996.

/s/ Alicemarie H. Stotler

ALICEMARIE H. STOTLER
UNITED STATES DISTRICT
JUDGE